IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.11 OF 2005

Nestor Kinny & Anr. ...Appellants

Vs.

Philip John Kinny & Ors. ...Respondents

Mr.Atul Tungare & V.S.Phatak for the Appellants

CORAM: A.S.OKA, J.

DATED: JANUARY 18, 2005.

P.C.:

1. Heard Counsel appearing for the Appellant. The Appeal is preferred by the original Defendant Nos.1 and 2 for challenging the order dated 18th October 2004. By the said Judgment and Order the learned Trial Judge has decided two preliminary issues. The first issue is regarding the jurisdiction of the Trial Court to entertain the suit and the second issue is regarding maintainability of the suit. The learned Trial Judge held that the Court had jurisdiction to entertain and try the suit and the suit was maintainable. This order is not appellable either under Section 104 or Order XLIII Rule 1 of the Code of Civil Procedure, 1908.

Hence, Appeal is dismissed as not maintainable.

2. The dismissal of the Appeal will not preclude the Appellants from taking out appropriate proceedings for challenging the impugned order.

Judge.